No. 97-1868

In The Supreme Court of the United States

October Term, 1998

UNUM Life Insurance Company of America,
Petitioner,

v.

John E. Ward,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

David L. Bacon
Counsel of Record
Thelen Reid & Priest LLP
333 So. Grand Avenue
34th Floor
Los Angeles, CA 90071
(213) 621-9800

Of Counsel
Barbara H. Furey
Asst. General Counsel
Brian G. Kanner
Senior Litigation Counsel
Tamarra T. Rennick
Litigation Counsel
UNUM Life Insurance Company of America
2211 Congress Street
Portland, ME 04122
(207) 770-2211

Russell G. Petti
Bannan, Green & Frank LLP
555 So. Flower Street
44th Floor
Los Angeles, CA 90017
(213) 362-1177

Attorneys for Petitioner UNUM Life Insurance Company of America

Jeffrey Isaac Ehrlich
Counsel of Record
2009 N. Fourteenth Street
Suite 708
Arlington, VA 22201
(703) 807-2600

Of Counsel
Brooks Iller
11770 Bernardo Plaza Ct.
Suite 205
San Diego, CA 92128
(619) 213-0855

Janice R. Mazur
Mazur & Mazur
13465 Camino Canada
No. 106-103
El Cajon, CA 92021
(619) 231-0855

Attorneys for Respondent John E. Ward

(Additional Counsel Listed on Inside Cover)

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LESLEY C. GREEN
BANNAN, GREEN & FRANK LLP
555 So. Flower Street
44th Floor
Los Angeles, CA 90017
(213) 362-1177

BENJAMIN I. DELANCY
CHARLES M. DYKE
THELEN REID & PRIEST LLP
333 So. Grand Avenue
34th Floor
Los Angeles, CA 90071
(213) 621-9800

Attorneys for Petitioner
UNUM Life Insurance
Company of America

TABLE OF CONTENTS

	Page
Docket entries, United States District Court for the Southern District of California	1
Docket entries, United States Court of Appeals for the Ninth Circuit	12
Excerpts from the Declaration of John Ward filed April 24, 1995	18
Excerpts from the Supplemental Declaration of John Ward filed July 27, 1995	20
Exhibit portions (MacQuarrie and Bonnie Deposition Excerpts) from the Declaration of Jeffrey P. Smith filed June 26, 1995	22

NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages of the printed appendix to the petition for certiorari. They are incorporated herein by reference:

Opinion of the Court of Appeals, filed February 3, 1998	1a
Order of the Court of Appeals denying Petition for Rehearing, with Suggestion for Rehearing en Banc, entered March 23, 1998	26a
Order of the District Court granting Summary Judgment, filed August 8, 1995	27a
Declaration of John A. Houser, III and Portions of Exhibits in Support of Motion for Summary Judgment, filed June 26, 1995	34a
Exhibit Portions (MacQuarrie and Ward Deposition Excerpts) to Declaration of Jeffrey P. Smith, filed June 26, 1995	73a
District Court Complaint, filed September 19, 1994	77a

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORIA
(San Diego)

Civil Docket for Case #: 94-CV-1454

JOHN E. WARD,
Plaintiff

v.

MANAGEMENT ANALYSIS CO.,
Employee Disability Benefit Plan,
Defendant

DOCKET ENTRIES

Date	No.	PROCEEDINGS
9/19/94	1	Complaint to recover benefits filed t/w exhibits; Summons(es) issued to atty on 9/27/94; (referred to Magistrate Anthory J. Battaglia); Receipt No/Amt of Fee: 7530/$120.00 (bk) [Entry date 09/27/94] [Edit date 09/27/94]
9/27/94	—	Summons issued to atty as to dft Management Analysis Company Employee Disability Benefit Plan (bk)
10/14/94	2	Return of Service re: Summons and Complaint executed upon defendant Management Analysis on 10/7/94 (bk) [Entry date 10/18/94]
10/31/94	3	Stipulation and Order by Judge Marilyn L. Huff; to Answer, to move or otherwise plead to Complaint: due 11/28/94 for Management Analysis (cc: all counsel) (bk) [Entry date 11/04/94]
11/23/94	4	Answer to Complaint by defendant Management Analysis Company Plan (proper party name: UNUM Life Insurance Company of America) (bk) [Entry date 12/08/94]

Date	No.	PROCEEDINGS
11/30/95	5	Order by Magistrate Anthory J. Battaglia; E.N.E. Conference set for 10:00 1/30/95 (cc: all counsel) (bk) [Entry date 12/08/94]
1/30/95	6	Minutes: Enter Order by Magistrate Anthony J. Battaglia; E.N.E. Conference held 10:00 1/30/95; case did not settle; dfts are going to move for summary judgment on timeliness of claim under the contract and as defined by law; Case Management Conference set for 1:30 3/29/95 for scheduling, this date was selected to allow for resolution of the summary judgment motion, which will effect the future scheduling (cc: all counsel) (bk) [Entry date 02/10/95]
3/9/95	7	Minutes: Enter Order by Magistrate Anthony J. Battaglia; Since the Court is issuing a Scheduling Order in this case, the Case Management Conference set for 1:30 3/29/95 is vacated cc: all counsel) (bk) [Entry date 03/22/95]
3/9/95	8	Order by Judge Marilyn L. Huff; Pretrial conf set 10:30 9/5/95; Trial set for 9:00 9/12/95 (cc: all counsel) (bk) [Entry date 03/24/95]
3/10/95	9	Order by Magistrate Anthony J. Battaglia; Discovery by 6/23/95; Settlement Conf 7/27/95 at 1:30; Pretrial orders by 7/27/95; Pretrial Conf set for 9/5/95 at 10:30; Trial set for 9/12/95 at 9:00 (cc: all counsel) (bk) [Entry date 03/24/95]
3/29/95	10	Stipulation and Order by Judge Marilyn L. Huff that dtfs UNUM Life Insurance Co of America and Management Analysis Co Employee Disability Benefit Plan have up to and including 3/28/95 to serve their responses to Pltf's First Req for Prod of Docs; dfts shall

Date	No.	PROCEEDINGS
		not file and serve their anticipated motion for sum jum until after the date of service of their responses (bk) [Entry date 04/14/95]
3/31/95	11	Notice of Motion and Motion by defendant Management Analysis for summary judgment [motion(s) referred to Judge Marilyn L. Huff] on 5/8/95 t/w prf svc (hs) [Entry date 04/14/95]
3/31/95	12	Memorandum of points and authorities by defendant Management Analysis in support of motion for summary judgment [11-1] t/w appendix (hs) [Entry date 04/21/95]
3/31/95	13	Declaration John A Houser III by defendant Management Analysis re motion for summary judgment [11-1] t/w exhibits (hs) [Entry date 04/21/95]
3/31/95	14	Separate Statement of material facts by defendant Management Analysis in support of motion for summary judgment [11-1] (hs) [Entry date 04/21/95]
4/24/95	15	Opposition by plaintiff John E Ward to motion for summary judgment [11-1] t/w Exhibit A (bk) [Entry date 04/25/95]
4/24/95	16	Declaration of John E. Ward re motion response [15-1] (bk) [Entry date 04/25/95]
4/24/95	17	Responses/Objections by plaintiff John E Ward to dft's separate statement of material facts [14-1] (bk) [Entry date 04/25/95]
4/24/95	18	Statement of facts by plaintiff John E Ward in support of opposition to motion for summary judgment [15-1] (bk) [Entry date 04/25/95]
4/24/95	19	Notice of lodgment by plaintiff John E Ward of Exhibit 1—Certified copy of depo tran-

Date	No.	PROCEEDINGS
		script of Dexana MacQuarrie; and Exhibit 2 —Certified copy of depo transcript of Maria E. Bonney in support of Pltf's opposition to motion for summary judgment [11-1] (Exhibits 1 & 2 to Court) (bk) [Entry date 04/25/95]
5/1/95	20	Reply by defendant Management Analysis and Unum Life Insurance Company to opposition to motion for summary judgment [11-1] (bk) [Entry date 05/12/95]
5/1/95	21	Objections by defendant Management Analysis and Unum Life Insurance Co to Pltf's request for summary adjudication (bk) [Entry date 05/12/95]
5/8/95	22	Minutes: Enter Order by Judge Marilyn L. Huff that the motion for summary judgment [11-1] is submitted on the papers—off calendar; Court Reporter: Nancy Cablay (bk) [Entry date 05/24/95]
5/8/95	23	Order by Judge Marilyn L. Huff denying motion for summary judgment without prejudice [11-1] (cc: all counsel) (bk) [Entry date 05/24/95]
6/5/95	24	Order by Judge Marilyn L. Huff denying dft's motion for modified scheduling order (cc: all counsel) (bk) [Entry date 06/25/95]
6/7/95	25	Stipulation and Order by Judge Marilyn L. Huff extending discovery cut-off from 6/23/95 to 8/15/95 for experts only (cc: all counsel) (bk) [Entry date 06/25/95]
6/22/95	26	Notice of Motion and Motion by defendant Management Analysis to strike Pltf's demand for jury trial hearing set for 7/24/95 at 10:30; [motion referred to Judge Marilyn L. Huff] (bk) [Entry date 07/06/95]

Date	No.	PROCEEDINGS
6/22/95	27	Memorandum of points and authorities by defendant Management Analysis in support of motion to strike Pltf's demand for jury trial [26-1] (bk) [Entry date 07/06/95]
6/26/95	28	Notice of Motion and Motion by defendant Management Analysis for summary judgment hearing set for 7/24/95 at 10:30; [motion(s) referred to Judge Marilyn L. Huff] (bk) [Entry date 07/06/95]
6/26/95	29	Memorandum of points and authorities by defendant Management Analysis in support of motion for summary judgment [28-1] (bk) [Entry date 07/06/95]
6/26/95	30	Declaration of John A. Houser III, by defendant Management Analysis re motion for summary judgment [28-1] t/w Exhibits 1-28 (bk) [Entry date 07/06/95]
6/26/95	31	Declaration of Dexana MacQuarrie by defendant Management Analysis re motion for summary judgment [28-1] (bk) [Entry date 07/06/95]
6/26/95	32	Declaration of Maria E. Bonney by defendant Management Analysis re motion for summary judgment [28-1] (bk) [Entry date 07/06/95]
6/26/95	33	Declaration of Jeffrey P. Smith by defendant Management Analysis re motion for summary judgment [28-1] t/w Exhibits 1-3 (bk) [Entry date 07/06/95]
6/26/95	34	Statement of facts by defendant Management Analysis in support of motion for summary judgment [28-1] (bk) [Entry date 07/06/95]
7/10/95	35	Opposition by plaintiff John E Ward to motion for summary judgment [28-1] (bk) [Entry date 07/17/95]

Date	No.	PROCEEDINGS
7/10/95	36	Opposition by plaintiff John E Ward to motion to strike Pltf's demand for jury trial [26-1] (bk) [Entry date 07/17/95]
7/10/95	37	Statement of material facts by plaintiff John E Ward (bk) [Entry date 07/17/95]
7/10/95	38	Opposition by plaintiff John E Ward to dft's separate statement of facts (bk) [Entry date 07/17/95]
7/10/95	39	Declaration of Brooks Iler by plaintiff John E Ward (bk) [Entry date 07/17/95]
7/17/95	40	Reply by defendant Management Analysis to opposition to motion to strike Pltf's demand for jury trial [26-1] (bk) [Entry date 07/21/95]
7/17/95	41	Reply by defendant Management Analysis to opposition to motion for summary judgment [28-1] t/w Exhibits A-C (bk) [Entry date 07/21/95] [Edit date 07/21/95]
7/19/95	42	Minutes: Enter Order by Magistrate Anthony J. Battaglia; Mandatory Settlement conference set for 7/27/95 is reset to 1:30 8/3/95; Mr. Iler is ordered to notice all counsel of change (cc: all counsel) (bk) [Entry date 08/01/95]
7/24/95	43	Minutes: Enter Order by Magistrate Anthony J. Battaglia; per info that Judge Huff has moved the Motion for Sum Jdgm to 8/7/95, Mandatory Settlement conference set for 8/3/95 before Magistrate Judge Battaglia is contd to 1:30 9/8/95 (cc: all counsel) (bk) [Entry date 08/01/95]
7/24/95	44	Minutes: Enter Order by Judge Marilyn L. Huff setting motion for summary judgment [11-1] at 10:30 8/7/95 setting motion for

Date	No.	PROCEEDINGS
		summary judgment [28-1] at 10:30 8/7/95 setting motion to strike Pltf's demand for jury trial [26-1] at 10:30 8/7/95; court requests further briefing; Court Reporter: Nancy Cablay (bk) [Entry date 08/01/95]
7/27/95	45	Supplemental Brief by plaintiff John E Ward re: date of disability in opposition to motion for summary judgment (bk) [Entry date 08/07/95]
7/27/95	46	Supplemental Declaration of plaintiff John E Ward re brief [45-1] (bk) [Entry date 08/07/95]
7/31/95	49	Supplemental Brief filed by defendant Management Analysis t/w Ex. A-B (bk) [Entry date 08/10/95]
8/2/95	47	Reply by plaintiff John E Ward to supplemental brief in opposition to motion for summary judgment [28-1] (bk) [Entry date 08/07/95] –
8/3/95	48	Minutes: Enter Order by Judge Marilyn L. Huff that the motion for summary judgment [11-1] is submitted; that the motion for summary judgment [28-1] is submitted; that the motion to strike Pltf's demand for jury trial [26-1] is submitted; Court Reporter: Nancy Cablay (bk) [Entry date 08/07/95]
8/8/95	50	Order by Judge Marilyn L. Huff granting motion for summary judgment [28-1] (cc: all counsel) (bk) [Entry date 08/15/95]
8/14/95	52	Minutes: Enter Order by Magistrate Anthony J. Battaglia; due to conflict on court's calendar; Mandatory Settlement conference set for 1:30 9/8/95 is reset to 2:00 9/8/95 (cc: all counsel) (bk) [Entry date 08/18/95]

Date	No.	PROCEEDINGS
8/17/95	51	Clerks Judgment: Defendant's Motion for Summary Judgment granted terminating case (cc: all counsel) (bk)
8/22/95	53	Notice of appeal by pla John E Ward from Dist. Court decision Receipt No/Amt of Fee: #17278/$105, [51-2] (ms) [Entry date 08/24/95]
8/23/95	54	Notice by plaintiff John E Ward of association of attorney Janice R Mazur (bk) [Entry date 08/24/95]
8/28/95	—	Record on Appeal sent to Circuit Court [53-1] (ms)
9/6/95	55	Notification by Circuit Court of Appellate Docket Number [53-1] 95-56269 (ms) [Entry date 09/08/95] [Edit date 01/07/98]
9/12/95	56	Transcript Designation and Ordering Form for dates: 8/3/95 [53-1] (ms)
9/27/95	—	Reporter's Transcript of proceedings for the following date(s): 8/3/95 (Re: [53-1]) (ms) [Entry date 10/03/95]
10/11/95	—	Mailed Certificate of Record Transmitted to USCA [53-1] (cc: all counsel) (ms)
1/16/96	57	Notice by plaintiff John E Ward of firm name change, address, telephone number and fax; please be notified that our firm name has changed and our address, telephone number and fax number have changed as follows, Iler and Palkowitz, APC, 4542 Ruffner Street, Suite 300, San Diego, CA 92111; telephone (619) 560-1400; t/w prf of srvc (lmm) [Entry date 01/22/96]
2/28/96	—	Mailed Original Clerk's record on appeal to USCA [53-1] 1 transcript (ms)

Date	No.	PROCEEDINGS
11/18/96	—	Mailed Original Clerk's record on appeal to USCA [53-1] 3 vols (ms)
1/14/97	58	Notice by plaintiff John E Ward of change of address and firm name change; attorney for pla, Brooks L. Iler, 11770 Bernardo Plaza Ct. Suite 205, San Diego, CA 92128, ntc to attny maintenance (jrl) [Entry date 01/21/97]
1/2/98	59	Notice by plaintiff John E Ward of change of firm name ; ILER & ILER, LLP, Attorneys at Law; t/w prf svc; (submitted copy to attorney maintenance clerk) (bar) [Entry date 01/05/98] [Edit date 01/09/98]
3/4/98	60	Order by Magistrate Anthony J. Battaglia ; Status conf set for 3:00 3/31/98 ; Settlement conference set for 3:00 3/31/98; documents shall be produced to defendant by 3/20/98; defendant will review the information by no later than 3/27/98; per order of 3/11/98, this order following settlement status conference was filed in error in the above referenced case and the clerk of the court is hereby directed to strike the order (cc: all counsel) (bar) [Entry date 03/05/98] [Edit date 03/11/98]
3/11/98	61	Order directing clerk of the court to strike order following settlement status conference filed 3/4/98 by Magistrate Anthony J. Battaglia striking Scheduling order ; striking order [60-2]; (cc: all counsel) (bar) [Edit date 03/13/98]
4/3/98	—	Received judgment from USCA. Forward to Court Clerk for calendar. (ms) [Entry date 04/06/98]
4/16/98	62	Notice of Spreading the Mandate; appeal mandate hearing set 10:30 4/27/98 re USCA

Date	No.	PROCEEDINGS
		reversing & remanding the USDC decision (cc: all counsel) " (pa) [Entry date 04/21/98]
4/27/98	63	Hearing requisite to filing the certified copy of the judgment of the USCA reversing and remanding the decision of the USDC STAYED until 10:30am on 7/13/98. Status hearing re: writ of certiorari set for 7/13/98 at 10:30am. (cc: all counsel) " (jp) [Entry date 04/30/98]
4/30/98	64	Order by Judge Marilyn L. Huff; 4/27/98 parties appeared for a hearing with the court Status conf set for 10:30 7/13/98 (cc: all counsel) (bar)
7/13/98	65	Minutes of Mandate Hearing, certified copy of USCA jgm reversing and remanding USDC decision ordered filed and entered; status hrg re writ of certiorari continued to 11/2/98 at 10:30 AM; parties are on notice that if the USDC declines to hear writ of certiorari, the ct will set dates immediately. Court Reporter: N Cablay (pa) [Entry date 07/14/98] [Edit date 07/14/98]
7/13/98	66	Certified copy of judgment from USCA reversing and remanding decision of the District Court re: appeal [53-1] (cc: all counsel) (pa) [Entry date 07/14/98]
7/16/98	67	Order by Judge Marilyn L. Huff: Status conf is set for 10:30 11/3/98 Parties shall contact Court's Clerk to reschedule this status conf in the event the U.S. Supreme Court renders a decision declining to review dft's petition for a writ of certiorari prior to scheduled status conf. (cc: all counsel) (hmr) [Entry date 07/17/98] [Edit date 07/23/98]

Date	No.	PROCEEDINGS
10/19/98	68	Amended Scheduling Order by Judge Marilyn L. Huff: Status conf is scheduled for 10:30 11/2/98 (cc: all counsel) (hmr) [Entry date 10/20/98]
11/2/98	69	Minutes: Enter Order by Judge Marilyn L. Huff ; Status conf re writ of certiorari vacated 10:30 11/2/98; USSC has granted writ of certiorari; (cc: all counsel) Court Reporter: n/a (jrl) [Entry date 11/05/98]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 95-56269

JOHN E. WARD,
Plaintiff-Appellant

v.

MANAGEMENT ANALYSIS COMPANY EMPLOYEE DISABILITY BENEFIT PLAN, (proper party name)
UNUM Life Insurance Company of America,
Defendant-Appellee

DOCKET ENTRIES

Date	PROCEEDINGS
9/1/95	DOCKETED CAUSE AND ENTERED APPEARANCE OF COUNSEL. CADS SENT (Y/N) : yes. Briefing schedule is as follows: CADS is past due; CADS must be filed no later than 9/8/95; aplt's designation of RT is due 9/1/95; aple's designation of RT is due 9/11/95; aplt shall order transcript by 9/21/95; court reporter shall file transcript in DC by 10/23/95 for Nancy Cablay; certificate of record shall be filed by 10/30/95; aplt's opening brief is due 12/11/95; aple's brief is due 1/10/96; aplt's reply brief is due 1/24/96. [95-56269] (jr) [95-56269]
9/8/95	Filed Janice R. Mazur for Appellant John E. Ward Civil Appeals Docketing Statement served on 9/6/95 (Confatt) [95-56269] [95-56269] (gva) [95-56269]

Date	PROCEEDINGS
9/18/85	Filed Nancy Cablay's notice of order of transcript RT ordered 9/1/95; Expected payment date: 9/5/95. (CASEFILES [95-56269] (hh) [95-56269]
10/11/95	Filed order CONFATT (blsp) This case is under consideration for inclusion in the settlement program . . . Unless otherwise ordered by the court, a settlement assessment conference will be held on 11/14/95 at 4:40 pm PT. The conference will be held by telephone . . . The court will initiate the telephone call . . . The existing briefing schedule remains in effect. [95-56269] (hh) [95-56269]
10/19/95	Filed certificate of record on appeal RT filed in DC 09/27/95 [aplt Ward by atty Mazur] [95-56269] (cmj) [95-56269]
12/13/95	Filed original and 15 copies Appellant John E. Ward opening brief (Informal: n) 32 pages and five excerpts of record in 2 volumes; served on 12/11/95 [95-56269] (hh) [95-56269]
1/12/96	Filed original and 15 copies appellee Management Analysis' 32 pages brief; served on 1/10/96 [95-56269] (hh) [95-56269]
1/17/96	14 day oral extension by phone of time to file Appellant John E. Ward's reply brief. [95-56269] appellants' reply brief due 2/12/96; (jlc) [95-56269]
1/17/96	Rec'd notice of firm name change, and change of address from Brooks Iler and Janice R. Mazur for Appellant John E. Ward, served on 1/12/96. (CASEFILES) [95-56269] (hh) [95-56269]
2/14/96	Filed original and 15 copies John E. Ward reply brief, (Informal: n) 14 pages; served on 2/12/96 [95-56269] (hh) [95-56269]
2/14/96	Rec'd notice of change of address from Janice R. Mazur for Appellant John E. Ward, served on 02/12/96. (CASEFILES) [95-56269] (hh) [95-56269]

Date	PROCEEDINGS
3/5/96	Filed, as of 10/19/95, certified record on appeal in 1 Vol (total): 1 RT (Orig) (Records) [95-56269] [95-56269] (gva) [95-56269]
3/18/96	Received aples' "Notice of related cases"; served on 3/14/96 (CASEFILES/RECORDS) [95-56269] (hh) [95-56269]
3/20/96	Filed order CONFATT (DLP) The court has determined that this appeal will not be selected for inclusion in the settlement program. All further inquiries regarding this appeal should be directed to the clerk's office. Csl are requested to contact the circuit mediator should circumstances develop that might warrant the initiation of settlement discussions. [95-56269] (hh) [95-56269]
3/23/96	Calendar check performed [95-56269] (aw) [95-56269]
5/2/96	Received Appellant's opposition to motion to consolidate cases; served on 5/1/96 (nan promo - no motion pending to consolidate) (CASEFILES) [95-56269] (hh) [95-56269]
5/8/96	Filed motion & order; (Deputy Clerk: lp) The crt is in recpt of the motion for leave to cons the above-captioned appeals filed by Aple UNUM Life Ins. Co., et al. The motion is granted in part. The following appeals shall be cons only for the purpose oral arg: 95-56179, 95-56269, and 96-55147. Appeal 95-16796 shall not be cons and shall be heard separately in 96-55147, 95-56179, 95-56269 (Motion recvd 04/23/96) [96-55147, 95-56179, 95-56269] (ot) [95-56179 95-56269 96-55147]
5/9/96	Filed Appellee UNUM Life's reply to aplt John E. Ward's opposition to motion to consolidate cases; served on 5/8/96 (work in progress/PROMO) [95-56269] (hh) [95-56269]

Date	PROCEEDINGS
5/28/96	Filed order/promo (Appellate Commissioner) The court is in receipt of aplt John Ward's opposition to the motion to consolidate the above-captioned appeals filed by aple UNUM Life Insurance Co., et al. The court is also in receipt of aple UNUM Life Insurance Company's reply to aplt Ward's opposition. The court construes the motion to be a motion for reconsideration of the court's 5/8/96 clerk order. So construed, the motion is granted in part. These appeals shall be calendared before the same oral argument panel, at the time the earliest eligible appeal is calendared Unless the panel directs otherwise, each appeal shall be treated as an independent appeal and will receive a full allotment of oral argument time. [95-16796, 95-56179, 95-56269, 96-55147] (em) [95-16796 95-56179 95-56269 96-55147]
8/20/96	Calendar check performed [95-16796, 95-56179, 95-56269, 96-55147] (aw) [95-16796 95-56179 95-56269 96-55147]
10/4/96	Filed aple Management Analysis' motion to substitute the law firm of Bannan, Green, Smith, Frank & Rimac, in place and stead of Adams, Duque & Hazeltine; served on 10/3/96 (CASEFILES) [3095836] (hh) [95-56269]
10/23/96	Calendar materials being prepared. [95-16796, 95-56179, 95-56269, 96-55147] [95-16796, 95-56179, 95-56269, 96-55147] (aw) [95-16796 95-56179 95-56269 96-55147]
11/1/96	CALENDARED: Pasadena January 9, 1997 9:00 a.m. Courtroom 1 [9-56269] (mw) [95-56269]
11/12/96	Filed supplement to certified record on appeal (filed) in 3 Volumes 3 Clerk's Rec (sent to Judge) [95-56269] (em) [95-56269]
1/9/97	ARGUED AND SUBMITTED TO Betty B. FLETCHER, Stephen S. TROTT, Bruce S. Jenkins [95-56269] (lu) [95-56269]

Date	PROCEEDINGS
1/15/97	Rec'd notice of change of address from Brooks Iler for Appellant John E. Ward in 95-56269 dated 1/11/97. [95-56269] (em) [95-56269]
2/13/97	Rec'd notice of change of address from Janice R. Mazur for Appellant John E. Ward in 95-56269 dated 2/9/97. [95-56269] (em) [95-56269]
2/3/98	FILED OPINION: REVERSED & REMANDED (Termniated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Betty B. FLETCHER; Stephen S. TROTT; Bruce S. Jenkins, author.) FILED AND ENTERED JUDGMENT. [95-56269] (tsp) [95-56269]
2/12/98	Filed motion and deputy clerk order ; (Deputy Clerk: EM) granting aples' motion & order to extend time to file a petition for rehearing [3393590-1] petition for rehearing due 2/24/98. (Motion recvd 2/12/98) [95-56269] (em) [95-56269]
2/25/98	[3401963] Filed original and 40 copies Appellee Management Analysis and Unum Life Insurance in 95-56269 petition for rehearing with suggestion for rehearing en banc 22 p.pages, served on 2/24/98 PANEL AND ACTIVE JUDGES [95-56269] (em) [95-56269]
3/23/98	Filed order (Betty B. FLETCHER, Stephen S. TROTT, Bruce S. Jenkins,): The petition for rehearing is denied and the suggestion for rehearing en banc is rejected. [95-56269] (em) [95-56269]
3/31/98	MANDATE ISSUED [95-56269] (em) [95-56269]
5/26/98	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 97-1867 (in 95-56179) ; No. 97-1868 (in 95-56269) ; filed on 5/21/98. [95-56179, 95-56269] (em) [95-56179 95-56269]

Date	PROCEEDINGS
10/16/98	Filed Supreme Court order (SC Date: 10/13/98). re: The motion of Standard Insurance Company for leave to file a brief as amicus curiae is GRANTED. The motion of Association of California Life and Health Ins. Companies for leave to file a brief as amicus curiae is GRANTED. The motion of American Council of Life Insurance, et al., for leave to file a brief as amicus curiae is GRANTED. The petition for a writ of certiorari is GRANTED. (PANEL) [95-56269] (sm) [95-56269]
10/16/98	Received notice from Supreme Court, petition for certiorari GRANTED on 10/13/98. Supreme Court No. 97-1868 (PANEL) (sm) [95-56269]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 94-1454H (AJB)

JOHN E. WARD,
Plaintiff,

v.

MANAGEMENT ANALYSIS COMPANY
EMPLOYEE DISABILITY BENEFIT PLAN,
Defendant.

DECLARATION OF JOHN E. WARD

April 29, 1995

I, John E. Ward, declare as follows:

1. I am plaintiff in this action. The following facts are personally known to me and if called upon to do so, I could and would competently testify thereto.

2. I became employed at Management Analysis Company ("MAC") in 1983 as Vice President of the general management consulting department. At the time I left my employment with MAC in May 1992 I was the President and CEO of the company.

3. I suffer from diabetic neuropathy which began with nerve damage to my feet in 1986 and has, since that time extended to my legs and eyes, rendering me totally and permanently disabled.

4. In August or September 1992 I had a telephone conversation with Marie Bonney, the employment administrator in MAC's human resources department, and advised her that I was disabled and inquired about the impact

of disabiilty on my health insurance coverage under COBRA.

5. In October 1992 I consulted with Dr. Robert A. Smith regarding the pain and marked weakness in my legs. Thereafter I underwent a series of medical consultations with other physicians which continued over the next few months.

6. In February 1993 I submitted my application for state disability to the State of California.

7. The State of California granted my disability application in late February or early March 1993. I thereupon contacted Dexana MacQuarrie, the vice president of administration at MAC, and discussed with her the fact that I was totally disabled and had received acknowledgement of my disability from the State of California. I inquired about benefits and she advised me regarding my rights under COBRA to extend my health insurance in light of my permanent disability.

8. On or about March 30, 1993 I received a letter from Ms. MacQuarrie acknowledging my permanent disability and discussing my rights and benefit under COBRA as a result of my disability and explaining that, in order to extend my health care benefits, I would need a determination of disability from the Social Security Administration.

9. In July 1993 I received my social security award of disability. I forwarded it to Maria Bonney who then assisted me in extending my health insurance benefits under COBRA.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

SUPPLEMENTAL DECLARATION OF JOHN WARD

July 27, 1995

I, John Ward, declare as follows:

1. I am plaintiff in this action. The following facts are personally known to me and if called upon to do so, I could and would competently testify thereto.

2. I have suffered from diabetic neuropathy since the mid-eighties. The symptoms which I experienced from that time until early 1992, primarily numbness and tingling, affected my work only minimally.

* * * *

7. During the last week I worked at MAC, and the following week, commencing May 11, 1992, when I was present at MAC cleaning out my office and otherwise "winding up", my condition was sufficiently severe as to require me to use a cane to get around.

8. Despite having been unexpectedly removed from my position, I fully expected to return to work, either as a part-time independent consultant for MAC, or in some other capacity with another company. In fact, during the next several months, I negotiated a new severance agreement with MAC and an independent contractor agreement that specifically provided for me to perform consulting services for MAC. Unfortunately, as it turned out, my health never improved and I was not physically able to perform consulting assignments.

9. During the next few months, my condition did not improve, as I had expected it would; instead, it became

worse. During the summer or early fall of 1992 I experienced increased pain and weakness in my legs, particularly the right leg, and thereafter began experiencing more severe low back pain. In approximately early October 1992 a marked increase in pain and weakness coupled with a reduced ability to negotiate steps or inclines and the fact that the condition had lasted much longer than it had in the past prompted me to consult with Dr. Robert Smith, who then referred me to a number of other physicians for evaluation. Ultimately, by December of 1992, I believed that I was permanently disabled.

10. In August or September of 1992 I advised MAC benefits administrator Maria Bonney in a telephone conversation that I was disabled and inquired at that time as to certain available benefits in light of the disability.

11. In July 1993, I submitted to MAC my formal written social security award of disability, which was issued in July 1993, but which acknowledged a disability date of May 10, 1992.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 27th day of July, 1995 in San Diego, California.

/s/ John E. Ward
JOHN E. WARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

DEPOSITION OF DEXANA MACQUARRIE

* * * *

[22] Q. Did it list an effective date of disability?

A. It listed the date of his—I believe his termination, or maybe it was the end of the month of his termination. I believe his coverage was through May of '92. It listed that as the appropriate date.

Q. Did you consider at that time advising Mr. Ward that he may be entitled to LTD benefits?

A. No.

Q. Do you know why?

A. It never occurred to me that—the subject of LTD never crossed my mind. My only involvement with him was on the extension of the COBRA, and that was the single focus of our interface.

* * * *

Deposition Exhibit MacQuarrie 1

FMAC
MANAGEMENT ANALYSIS COMPANY

March 30, 1993

John E. Ward
4721 Sara Drive
Torrance, CA 90503

Dear John:

I was disappointed to hear that your condition is not improving and is now considered a permanent disability. In response to your request for continuation of your COBRA coverage, I want to advise you of the requirements under our plan which is governed by the federal laws established for COBRA.

The Plan Document (copy of portion which references continuation coverage attached) and the portion of the Summary Plan Description related to this issue (copy also attached for reference) do not set forth all specifics related to continuation coverage. While these documents confirm that continuation coverage will ~~never exceed~~ 36 months, the provision for extending coverage for disabled benefits is limited to 29 months (see attached excerpt from a document published by the Bureau of National Affairs in Washington, D.C.).

When you terminate employment, you are entitled to extend insurance coverage through COBRA for an additional 18 months. Since you terminated with MAC mid-month on May 8, 1992, your regular health coverage did not terminate until May 31 and your COBRA benefits began June 1. Accordingly, MAC's obligation to pay for your COBRA coverage for twelve months ends effective May 31, 1993. At that time you have the option to continue

paying the COBRA premium ($495/month for medical, dental and prescription and $455/month for medical and prescription only for calendar 1993) for an additional six months of coverage through November 30, 1993.

After that time, as shown on the attached excerpt, you are entitled to continue COBRA for an additional 11 months if:

- You obtain a determination from the Social Security Administration of disability at the time of the qualifying event (i.e., June 1, 1992, when you were no longer eligible for insurance under MAC's health plan and became a COBRA participant).
- Notify MAC of the above determination before the end of the 18 months coverage period (i.e., November 30, 1993) and within 60 days after the date of determination of your disability by the Social Security Administration.

Upon receipt of the proper documentation we can continue your COBRA benefits through October 31, 1994. The premium for this additional 11 months coverage will be 150% of the 1994 COBRA rate, as allowed by federal law and consistent with corporate practice for additional extensions of COBRA for participants requesting coverage based on a disability.

John, please feel free to call me if I can do anything to assist you. I'll be happy to help you in any way I can.

Personal regards,

/s/ Dexana G. MacQuarrie
DEXANA G. MACQUARRIE
Vice President

cc: J. Dollard

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

DEPOSITION OF MARIA E. BONNEY

* * * * *

[14] Q. And again, as far as you know, that was done on a monthly basis?

A. Yes.

Q. As you sit here today, have you ever personally submitted a disability claim for a member or assisted a member in submitting a disability claim?

A. Yes.

Q. Approximately, how many?

A. Five.

Q. Do you remember when you first assisted someone?

A. Had to be, oh, probably, three or four years ago. Four years ago.

Q. Do you remember the circumstances just generally of how that occurred, the nature of the disability?

A. Employee had had a stroke, and his wife called to find out what benefits were available and medicalwise and everything because he wasn't able to talk or write or anything. So she called.

Q. Did she call and specifically ask for a disability claim form, or was it the type of thing she just wanted to know what benefits she was entitled to, and then you suggested what benefits she may be entitled to?

A. I don't remember the exact conversation, but I I would think that I would get his file, look, see what he had, walk through what he had, and just go through it with her.

[15] Q. Just from a procedural standpoint, do you recall how that disability claim was handled? In other

words, did you provide the application, or did she have to go to UNUM for the application? How did that work?

A. I believe in this case, we provided her the application. Since we had some on file, I sent it to her.

Q. And then was the application returned to you or directly to UNUM?

A. In this case it was returned directly to me, and I sent it into UNUM for her.

Q. Did you have any additional involvement in the disability claim for that individual?

A. No.

Q. Was he put on long-term disability?

A. Yes.

Q. Can you remember any of the other people who applied for disability through your office?

A. Yes.

Q. Describe for me the nature of the disability, and again, we'll go through the procedure that was followed then.

A. Okay. There was an instance where a lady was pregnant with twins and her doctor put her on bed rest for five months, and so she had called, wanted to know, again, what benefits were available, since she couldn't work, and she then requested an application for LTD, and I sent it to her, and then she submitted it to UNUM.

Q. Do you remember any of the others?

[16] A. There was another one, a gentleman that had knee surgery, and he was unable to work for a while, and again, he requested an application. I sent it to him, and he submitted it directly to UNUM.

Q. I think there were two others, if you remember them.

A. One other—he had throat cancer, and I honestly don't remember sending him the application. I believe he got it directly from UNUM. I remember talking to him about it, and he had some questions about what he has to do, and I believe he got it directly from UNUM. I had very little involvement with that one.

Q. Do you remember the nature of the questions that he had regarding the application?

A. It was more the time frame, what the benefits were, you know. They were kind of minimal, but I just remember he had a few questions.

Q. And the last one, if you remember. Wait a minute. No. There should be one more.

A. The only way I can think of what it is, if I look at the file and see what the file says. Maybe there was only four.

Q. Do you remember the last time you handled a disability claim? By handled I mean participated in the process.

A. It was the one with the throat cancer. It was the most recent.

* * * *

[21] Q. Prior to him sending that to you, had you had any conversation with him where he advised you that he thought he was disabled?

A. No.

Q. Are you saying that you first became aware that he was disabled when you received the Social Security disability information?

A. Yes.

Q. And prior to that time, you had no conversation with him regarding his disability status?

A. I did not talk with him, no.

Q. Was it after that time that you received the Social Security information that you had conversations with him regarding the COBRA extension?

A. I never talked to him about the COBRA extension.

Q. Okay.

A. He did call me. When he got his Social Security document, I remember him calling me and saying it's in the mail, and you should receive it the next day.

Q. Was there any discussion at that time regarding his potential entitlement to long-term disability benefits?

A. No.

Q. Did you believe at that time that he was eligible for long-term disability benefits?

A. I never even thought about it.